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cause it does not in form comply with requirements of the constitution, and (2) because the subject matter, being temporary in character, is appropriate not for a constitutional provision but for a statute. *State ex rel. Halliburton v. Roach*, 130 S. W. 689 (Mo.).

There are undoubtedly many provisions in the state constitutions which, from the view-point of political science, belong properly in the field of legislative enactment. See 1 BRYCE, *AMERICAN COMMONWEALTH*, ch. 37. But if the principal case can be rested on the second ground, it seems to follow that such provisions, although formally made a part of the constitution, are really not such, and can be repealed by the legislature, a result for which hardly any one would contend.

CONSTITUTIONAL LAW<sup>7</sup>—SEPARATION OF POWERS—THE REFERENDUM.—The Wisconsin legislature passed a direct primary law and provided that it should go into effect only if ratified by a majority of the votes cast at the next general state election. *Held*, that the statute is constitutional. *State ex rel. Van Alstine v. Frear*, 142 Wis. 320. See NOTES, p. 141.

CONTRIBUTORY NEGLIGENCE—PERSONS UNDER DISABILITY—WHETHER MENTAL CAPACITY OF ADULT PERSON MAY BE CONSIDERED.—In an action against a street railway company for personal injuries alleged to have been caused by the defendant's negligence, the jury was instructed that in determining whether the plaintiff had been guilty of contributory negligence the fact that the plaintiff's mental capacity was less than that of the average adult person should be considered. *Held*, that the instruction is correct. *Howden v. Seattle Electric Co.*, 180 Fed. 487 (Circ. Ct., W. D. Wash.).

This decision is contrary to the universal rule that every adult, who is neither so insane nor so imbecile as to be utterly incapable of taking precautions, is held to the degree of care which is exercised by men of ordinary prudence under similar circumstances. *Davis, Adm'x v. Concord & Montreal R. Co.*, 68 N. H. 247; *Worthington & Co. v. Mencer*, 96 Ala. 310. The case is not in accord with the law as laid down by the state courts of Washington. See *Williams v. Ballard Lumber Co.*, 41 Wash. 338, 345. The opinion is based upon a case which is plainly distinguishable as involving only the question of a child's negligence. *Baltimore & Potomac R. Co. v. Cumberland*, 176 U. S. 232. A child's duty of care is not measured by the adult standard. In some cases the degree required is stated to be that which an ordinarily prudent child of the same age would exercise under similar circumstances. *Rolling Mill Co. v. Corrigan*, 46 Oh. St. 283. In other cases, the mental and physical maturity and capacity of the child, besides the age, have determined responsibility. *Illinois Iron & Metal Co. v. Weber*, 196 Ill. 526; *Western & Atlantic R. Co. v. Young*, 81 Ga. 397. Exactly what is the child's standard is thus an open question. But the adult standard takes no account of the personal equation, and the principal case seems clearly wrong.

CORPORATIONS—ACQUISITION OF MEMBERSHIP—EFFECT OF INSOLVENCY OF CORPORATION ON RIGHT TO RESCIND STOCK SUBSCRIPTION FRAUDULENTLY OBTAINED.—Certain persons were fraudulently induced to subscribe for stock in a banking corporation which shortly afterwards made an assignment for the benefit of creditors. In proceedings for the appointment of a receiver, these persons intervened with a petition that their contracts be rescinded. *Held*, that they may rescind. *Gress v. Knight*, 68 S. E. 834 (Ga.). See NOTES, p. 147.

CORPORATIONS—CAPITAL, STOCK, AND DIVIDENDS—STOCK ISSUED IN PAYMENT FOR OVERVALUED PROPERTY.—The stockholders of two corporations entered into an agreement of consolidation. Corporation X was to issue